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Status of 'Akad Nikah' Ownership of Jointly Acquired Property Between Married Couples According to Shariah Perspective

Akli Ahmad

Universiti Islam Antarabangsa Sultan 'Abdul Halim Mu'adzam Shah, Kuala Ketil, Kedah Darul Aman, Malaysia

Wan Nazjmi Mohamed Fisol

Sultan Abdul Halim Mu'adzam Shah International Islamic University (UniSHAMS), Kuala Ketil, Malaysia

Abstract---'Akad nikah' is a 'syar'ie contract' which binds married relationships as a bond that stipulates some of the rights that their spouses must fulfill either physical and inner maintenance (nafkah) of a wife. The ruling of this maintenance is obligatory to be adorned according to the rates and conditions set by syara'. However, the maintenance rate varies between an individual and another. It is based on the individual capabilities of the giver and the individual position of the recipient. Some maintenance rates are referring to the 'urf of a place. The obligatory nafkah given to the spouse is the absolute possession of the recipient without being withdrawn by the giver. While every gift other than mandatory maintenance is included in the category (tabarru') or a donation that is permissible or required. This type of grant will specify the occurrence of transfer if the recipient has already received it in cash (qabadh). While the jointly acquired property is essentially any property that is jointly owned by two or more parties, by sharing the capital for its ownership.

Keywords---akad nikah, distribution justice, jointly acquired property, married relationships.

Introduction**Marriage contract**

In terms of language: Lean or inclined. In terms of terminology: A contract that legalizes things that were forbidden between a man and a woman before that, in which the marriage contract is the source of authority to the obligations given by

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Corresponding author: Ahmad, A.; Email: akliahmadh@unishams.edu.my

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the husband to his partner. A marriage contract that has sufficient pillars and conditions is punished as valid in terms of *syara* 'and it will bind the husband and wife with certain rights that must be fulfilled by each party. Part of this right is obligatory alimony which covers external and internal.

Alimony

Alimony according to the language it is a gift. In terms: the gifts given by the husband to his family members include his wife and children and the persons who are obligated to be borne by him. The law of alimony is obligatory to be paid according to the rates and conditions set by the *syara*'. If the spouses neglect this responsibility and without any form of consent, then it is considered a misconduct of the spouses that can be sued in court. Outward alimony is an obligation on behalf of the husband to the wife including the provision of food, drink, clothing and shelter. All mandatory expenditure rates for each item specified have been set by the authorities of each state and they differ between states based on the *'urf* of a place where the couple is based on current needs. No one is exempt from fulfilling this responsibility whether the husband is poor., medium or rich. Each with their own abilities and levels. It is the obligation of the *syara* 'which has been established as the source of life of the wife to live life as a partner to her husband ([Hosseinkhazadeh, 2011](#); [Gray et al., 2002](#)).

Matrimonial property

matrimonial property according to the term is a group of property shared jointly by two or more parties either the partnership of a married couple or other than them. This property is conceptualized as a joint partnership in terms of capital or work on the same job without wages paid as an employee. The basis of the acquisition of matrimonial property is the partnership of any two or more parties while producing the property jointly. Before the author discusses the issues related to the wife's ownership of matrimonial property, first listed some forms of wife's income from the beginning of her marriage until the occurrence of divorce, death and so on. likewise, it will be stated that the matrimonial property is really matrimonial because there is a joint capital sharing in the purchase of a property or asset ([Keller et al., 1996](#); [Khawaja & Milner, 2012](#)).

Methods of wife's ownership of property in married life

- Maskahwin
- Mandatory alimony given by the husband
- The wife's actual work (government or private)
- The results of the wife's business (individual or company).
- Tabarru 'from the husband and others
- Wages for breastfeeding
- Zakat received
- Study aid or loan

Dowry

Maskahwin or dowry is a mandatory gift that has been prescribed by the syara 'on the husband for each time the marriage contract is performed. If a valid marriage contract has taken place and a valid khulwah has taken place, then the husband is obliged to hand over the marriage to the wife. All obligatory alimony given by the husband to the wife whether food, drink, clothing in physical form belongs to his wife in perfect ownership. Similarly, every alimony paid in the form of currency equivalent to the obligatory alimony rate is a perfect property for the wife. If there is an excess of the alimony, it is the wife's full right. If the wife sells the clothes provided by the husband, or the surplus food and drink provided, then the income from the sale belongs to the wife entirely. Therefore, the husband has no right to the property (Joireman, 2008; Al-Laham et al., 2010; Barlow, 2008).

Actual work (government or private)

All the wife's income from work done either in the public or private sector belongs to the wife. This is because the income comes from the wife's hard work. This title applies if she works with her husband's permission. Included in this income are all bonuses, rewards and so on that are based on the actual work of the wife. Thus, there is no right for the husband to the income except with a gift or hibah by the wife to the husband. If the husband does not permit the wife to work, then it is obligatory on the wife to obey the husband at that time. In fact, if the wife who had worked before marriage then the husband forbade her to work then the wife is obliged to obey the husband at that time without any choice.

Wife's business results (individual or company)

All the wife's income from the profits of the business is wholly owned by the wife. This is a reference to the method of syara 'which means that every profit earned is beyond the risks that may occur (al-Ghunmu bi al-Ghurmi). When the wife issues business capital, then she will bear all the risk of loss and so on. Thus, the ownership of profits and capital is the right of the wife who runs the business. The husband has no right to claim any property from this type of income unless the husband becomes a financier to the wife's business or becomes an employee of the wife's company entitled to wages only, not as a profit-sharing.

Tabarru', gifts and grants from the husband and others

All property donated by the husband other than the obligatory alimony becomes the property of the wife after she receives the gift by hand. Similarly, the gift of external parties to the wife such as prizes to win a competition, bank draw prizes (al-Awfar savings prize), gifts in conjunction with a birthday or wedding anniversary and so on, it will belong to the wife entirely.

Wages for breastfeeding

All the wife's income resulting from taking breastfeeding wages from the husband if so required then the income is the property of the wife in full ownership. This is

a bit isolated from the practice of society because wives are more likely to breastfeed on the basis of love. However, it should be noted that a mother's milk belongs to her husband if it is the result of legal sexual intercourse or through wati 'syubhah. Taking wages from the milk given to the husband's children is a sickle in the Qur'an (al-Talak, 6) which means: "and if they (wives) breastfeed your children (husbands) then give them wages". However, the wages must be clearly stated in the contract between the husband and wife. Without a contract made it is considered tabarru '.

Zakat received

All property of zakat giving, whether in material or monetary form received by the wife, belongs to the wife in her capacity as a entitled zakat asnaf. Today we find that many of the recipients are women whether married or alone, either while studying or after starting a household and all income earned by the wife is his. This ownership is stated in the Qur'an (al-Taubah, 60) which means: "Only the alms (obligatory zakat) for the poor, needy, amil, converts, slaves to be freed, debtors, fisabilillah and ibn sabil). Therefore, every zakat received by the wife becomes hers.

Assistance or study loans

All the wife's income received as study aid at all levels of education whether secondary, college, university, diploma, bachelor's, master's and doctoral degree is the property of the wife in full ownership.

Matrimonial property through joint capital sharing

All assets or property acquired by the spouses by sharing capital are jointly owned by random distribution on the parts of the property according to their respective capital sharing ratios. Today most working couples share in buying an asset or property such as a house.

Wife's work in the household

Work - household work and ownership status through household work contribution

In matters relating to the housework of the husband and wife and their respective responsibilities in terms of who among them will take part in the work and what rights should be obtained from the work. Touching on this matter, the author focuses on several issues related to the meaning of housework, types of housework, propositions on housework and the people who should do the work and so on ([Marshall & Anderson, 2002](#); [Fafchamps & Quisumbing, 2005](#)).

Shari'ah basis for homework for wives

The basis in question is the dalil syara 'which shows the existence of housework for wives in married life. Thus, with the term wife work at home, it will be the basis for discussions related to matrimonial property.

One of the sources from hadith, the Prophet SAW said:

كان النبي صلى الله عليه وسلم في مهنة أهله، وإذا حضرت الصلاة خرج إلى الصلاة

Meaning: "The Prophet SAW when he was at home, he would do the work of his wife together, and when the time for prayer came, he would go out to pray". (Al-Bukhari, 644).

In this hadith, the word "مهنته" is a combination between "مهنة" and "أهله." It is in the form of "mudhaf" and "mudhaf ilayhi" which means work for his wife or in simple language the wife's work at home. this (the words *mihnah* and *ahlihi*) can mean specific housework for the wife. As we all know that the association of two words indicates a specific meaning or belonging.

Types of housework

Necessary work is work that needs to be done as fulfilling the demands of married life. Assuming that if the work is not done, it can cause married life to be a little difficult even if it does not reach the level of harm such as preparing food and drink, providing clothing and providing the necessary household equipment. The explanation is that if this type of work is not done, it will cause a little difficulty in living a married life. If the wife does not cook the food, it will cause inconvenience to the husband or family members to take the food as satisfying the needs of the stomach (Ibrahim et al., 2012; Karjono et al., 2017).

Non -essential work is work done outside the needs of a household with the intention that if the household does not have the item, it does not cause any inconvenience to the husband or other family members. This type of work is like planting flowers, painting the house, decorating the house with accessories (tahsiniyah). The explanation is that the work of the wife in this category, if ignored, does not give any difficulty (masyaqqah) or emergency to the couple or other family members. It can be categorized as tahsiniyah work only.

The opinion of the Muslim scholars regarding the law of housework is not a requirement (*tahsiniyah*) on the wife

The author finds that this issue may never have been discussed by the scholars specifically because it is not included in the obligatory work or the responsibility of the husband to provide it and neither is it obligatory for the wife to perform it. Thus, it is not a common task behind every marriage contract. This means that the marriage contract that takes place legally between the husband and wife does not cover this type of tahsiniyah housework. The author is of the view that the wife should ask the husband's permission to do this type of work because it will take up the time and space of the husband's right to the wife. This can be compared to the necessity of fasting circumcision where the wife first asks permission from the husband to perform it. Even if the husband forbids the wife to fast the sunnah, then the wife cannot perform it.

The opinion of scholars regarding the law of housework on the wife

First opinion: it permissible and is not obligatory but the preferably is that the wife does the housework according to local customs. Second Opinion: it is obligatory on the wife to do housework and serve the husband. Third opinion: it is obligatory if the wife of a poor person or his family is heavy without a made, but it is not obligatory if he is a person of rank or custom with a made.

Proof

Proposition of opinion that says it is obligatory to do housework on the wife as a service of the husband.

أن النبي صلى الله عليه وسلم حكم بين علي بن أبي طالب رضي الله عنه، وبين زوجته فاطمة رضي الله عنها حين اشتكيا إليه الخدمة، فحكم علي فاطمة بالخدمة الباطنة، خدمة البيت، وحكم علي بالخدمة الظاهرة.

Meaning: The Prophet (peace and blessings of Allah be upon Him) decided between Saidina Ali and Saidina Fatimah when they complained to him about matters related to housework, which the decision was; housework (الاعمال الباطنة) is the responsibility of Saidatina Fatimah. While Saidina Ali was assigned to work outside the home (الأعمال الظاهرة) which is work to earn income.

Understand the above statement, that it is the duty of work between husband and wife, where work outside the home is the duty of the husband. While the work in the house is the duty of the wife. Therefore, the wife doesn't need to take a wage for the housework she does. Consequently, the housework done by the wife cannot be used as business capital with the husband on the concept of abdan company to claim matrimonial property on the husband's income.

Propositions of opinion that say it is not obligatory even should be

First: A marriage contract that is valid according to the syara 'is a contract that takes place for the purpose of allowing fun between husband and wife as well as allowing sexual intercourse between couples. The marriage contract does not cover the wife's obligation to serve in the household and so on. Second: Maskhawin which is obligatory to be paid to the wife after a valid marriage contract and has passed a time that allows for both, is beyond the obligation to have sexual intercourse alone. Third: The hadiths of the Prophet SAW which show the existence of housework done by the wives, including the wives of the Prophet, it does not indicate the obligation of such work. In fact, it merely shows the virtue of morality and benevolence alone (Subriani, 2017; Gede Budasi & Wayan Suryasa, 2021).

The relationship between housework law and matrimonial property claims

Alimony does not mean that the husband must cook, wash and so on by himself. This is because the word 'nafkah' is widely used in Arabic by carrying the meaning of 'giving provision' and with that provision, the recipient can do all the needs on their own. This is like a father providing for his children and so on.

whether by the father himself providing food for the children and anyone under his care. In fact, what happens is that the father will only pay the food bills for the children in his care. This action means that a father has legally supported his child according to the syara ' Another thing is related to the wife who works voluntarily and spends most of her time outside so that she cannot concentrate on housework so she has to be hired by a wage earner and paid her wages to do the housework. In this situation, is it right for a wife to claim matrimonial property when many household chores cannot be done properly according to custom. After all time with the husband at home is sometimes very limited due to the need for the wife to be at work, meetings outside, courses and so on. therefore the treatment given to the husband is not as maximum as the husband's wishes and customs in society (Maksymova et al., 2021; Cambri, 2021; Woang, 2021).

Basis of matrimonial property ownership and method of division

Ownership of property in syara 'has the reasons stated by syara' so that the findings of the property are valid and become permanent property. Hence the right for him to use the property freely without any liability,

Allah SWT said :

﴿ لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ ﴾

Meaning: He shall have the reward of what he did, and he shall have the punishment of what he did. (they pray)”.

The ownership of matrimonial property is something that is commonly associated with Islamic law without exception, and it must have a source of power taken from the source of Islamic law and with the permission of Islamic law. Therefore, the discussion on the ownership of spencarian property should be referred to the meaning of the marriage contract, the concept of partnership in the household, work in the household and so on. This is important to look at because it is a factor that is a mechanism to marital property claims.

Before discussing this concept in more detail, the author will list some forms of contracts and work that bring in income and transfer ownership perfectly. Syara 'has laid down several forms of work that can be the reason for ownership and the reason for transfer of ownership of a property acquired. Among the forms and works are as follows:

- Hunting
- Working on idle land that is not owned
- Mineral property in the belly of the earth
- Construction and enterprise
- Business or trading
- Take work wages/work commissions
- Work commission
- War
- Receipt of zakat distribution, financial assistance and so on.
- Work either physically, ideally and so on.

Turning to the issue of matrimonial property ownership between spouses, it is necessary to look in more depth at the following:

Marriage contract

A marriage contract that is valid under the syara 'is a syar'i contract that specializes in matters related to the relationship between men and women in order to allow some things that were previously forbidden. It is a covenant that is outwardly only to bind the relationship of the husband and wife on the rights that must be fulfilled by them based on Islamic law. A lawful marriage has established a number of rights that must be exercised by the husband towards his wife. And this obligation does not entitle the husband to ask for any wages from his wife. This is so because the things that must be done as a lawful husband, are not eligible for wages.

Inner sustenance (*Nafkah batin*)

Nafkah Batin is an obligation on the husband and wife who As the wife cannot take wages in addition to nafkah batin which must be paid to the husband. This is because the alimony is the wife's obligation to the husband. Similarly, a husband cannot take wages for the alimony that he is obliged to pay to his wife. Something that has been made obligatory on a person by the syara 'does not entitle him to get a wage for the work.

The wife works with the husband

There are a handful of married couples who run their own work in business and so on. At the same time there is also a husband who takes the wife as an employee in his business, and pays wages for the duties assigned either in the form of salary or monthly, weekly or daily allowances. Therefore, with the wages and salaries paid by the husband to the wife, then the work can no longer be used as part of the capital sharing in the husband's business income. This is because if given a salary for work with the husband and given the ratio of return from the husband's business, it is considered to have obtained 2 rights in the same job. This is something that is unfair in terms of the concept of income profit distribution in a business. The wife's work cannot be considered capital because she has been paid for her work.

The wife invests in the husband's company by taking profits

There are a handful of wives who invest in their husband's company as an opportunity to generate income. In this context all income from the profits of the husband's business is the sole property of the wife on the basis of capital. Therefore, it is no longer possible to use the investment capital as a separate element to claim matrimonial property from the husband's business income. If the wife claims matrimonial rights on the husband's business earlier, then it has taken away two rights from the same source of income. This is taking people's rights without permission.

The wife helps the husband with his work

Most couples help each other in their work matters. There were times when the husband who was doing his real work had to take home the rest of the work to be completed at home. Some of the work done is assisted by the wife on a purely voluntary basis. Therefore, the wife's action to help her husband's work voluntarily without any pay is tabarru 'which does not involve any employment contract that should be paid. Therefore, is it right for the wife to make this type of work as capital to claim matrimonial property against the husband's income. If the wife is allowed to make a claim for matrimonial property for the tabarru 'work done, then the same claim can also be made by any individual who has helped someone's work even on the basis of tabarru'. The concept of tabarru 'is to do work voluntarily and for free. If the work done is paid then it is not named as tabarru 'or helping each other.

The wife works with the husband

There are a handful of married couples working together in the same job, the same time, as is the case with couples working in rubber plantations, paddy fields and so on. In this concept of joint work, each should have a right in each income of the work on the joint venture. However, when the work done is not specified in any form of contract agreed then it is not considered a joint venture company at that time. Even husbands who work conceptually never think of dividing the income. After all, each of them feels that it is a form of joint contribution in earning a living for the family together. All the income will usually be spent together in married life. In the context of such a wife's work, can it be used as an element to claim matrimonial property from the income. So here arises a problem that is the claim made is in the name of income distribution, but no clear contract has been agreed on that basis. Therefore, in fairness, if there is no contract for the work, it is considered tabarru '. Therefore, every work done based on tabarru 'should not be used as collateral for matrimonial property. This is like a husband who cannot claim any contribution that has been given to his wife because it is a tabarru 'that takes place voluntarily.

The relationship of the marriage contract with the 'abdan company'

Several court decisions that have been processed have ruled that sometimes the wife has the right to claim matrimonial property against the husband's income. Among the reasons for the judgment given is that the relationship between husband and wife in housework and outside work is on the principle of 'al-abdan company' or on the basis of customs practiced in society. It regards housework as part of the capital contribution to the husband's work in the form of energy, and it is named as 'al-abdan company'. This judgment occurs even if it does not have any form of document convicting the existence of an agreement requiring so. Indeed, the implications of every work done must be bound by a strong contract to convict a right to qualified parties. Therefore, Islam requires the occurrence of every property transaction through a contract so that it becomes the basis for every claim made. Thus in the context of housework done by the wife it cannot be considered as energy capital for 'al-abdan company' as no contract has been agreed to indicate so. While the marriage contract that took place does not

contain the meaning of 'al-abdan company' in terms of capital sharing, profit ratio and so on. If it is true what is decided for the wife as a matrimonial property from the husband's income, then it is true that the contract of 'al-abdan company' is done other than the marriage contract, either simultaneously or done afterwards. With this agreement, it is clear that the division of the property is already a form. Of course, the solution to this issue is to refer to the opinion of scholars regarding the law of the wife's work at home and the law of serving the husband, whether it is an obligation or a must.

The wife does the housework

Wife's work at home which includes the preparation of food, drink, clothing and so on is a common practice for all societies in the world and regardless of religion. Certainly, it is a hereditary customary practice that is inherited and becomes a daily routine in life in the household. However, the debate this time focuses from the point of view of the wife's contribution to housework to the marital property claim. This issue arises when the judiciary in court makes the work a partnership in the work of the husband, as if it were a partnership in the form of 'syaikat al-abdan'. The explanation is that, if the wife does not do the work, perhaps the husband will not be able to do the work to earn a living. Thus, the wife's work is considered energy capital in the husband's work. From the second point of view, there are parties who make the wife's housework as a marital property claim based on customary practices. They argue with the well-known method of jurisprudence, namely, 'al-'Adah Muhakkamah' which means that every custom that is practiced in society can be used as a source of law. This method is based on the hadith of the Prophet SAW which means: "What Muslims see as good, then it is also considered good in the sight of Allah". Therefore, there is a finding of community practices that practice so. For submissions writer who said it was customary practices the Malay Muslim community in particular, need to be reviewed. This is because most of the people known to the author, for cases of husband's death or divorce, no wife for such cases makes a marital property claim. In fact, they consider it the wife's contribution to the household and help between husband and wife. Whereas according to the second opinion which states that work in the house is a duty on the wife, then it is not right to make it an element to claim matrimonial property. This is because the things that are obligatory cannot be taken for a wage because it is his individual responsibility.

Husband's contribution to wife

Any contribution of property in any form, given by the husband to the wife, other than the obligatory alimony is a hibah or gift to him. This gift can be considered as a token of remembrance for all the contributions of the wife in household work, educating and taking care of children or as an appreciation or the like. This grant, if there is a handover and cash receipt, it is a perfect transfer transaction on behalf of the wife. In the event of any separation involving the couple, whether by divorce, fasakh or death, then the husband cannot ask for the value of the gift to be returned. As the husband's tabarru 'given to the wife cannot be considered as matrimonial property. Therefore, there is nothing in the court's provision that states that the husband can reclaim all the gifts that have been transferred to the wife.

Conclusion

A valid marriage contract according to the syara 'has enshrined some rights that must be provided by the husband to his wife. Marriage contracts are not included in the category of business contracts, investments and so on. Housework is the responsibility of the wife according to the Qur'an, the hadith of the Prophet SAW, the customary practices of society to this day. Even anyone who thinks that a wife is not obligated to do housework, yet in the reality of her life it happens the opposite. There are two categories of housework done by the wife, namely, necessity work such as providing for the family's needs and non-necessity work, such as planting flowers, decorating the house and so on. It cannot be used as housework in the non-necessity category as investment capital for the husband's work in the name of al-Abdan's company to claim the matrimonial property.

The property produced jointly is the property of the couple without fault. It is like a married couple buying an asset by sharing capital on the property. The property acquired by the wife works is the property of the wife. As for the property acquired by the husband by his efforts is his wholly on nomination and rights. However, according to some scholars, in the husband's work income, there is also the wife's ownership ratio because it is a partner. However, this opinion is rather weak in its argument because the customary claim practiced by most communities contradicts that opinion and the claim that it is al-abdan company is necessary to the contract that binds such matters.

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